

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

<b>MEAGAN EARLY</b>	)	
	)	<b>DEFENDANTS REQUEST TRIAL</b>
<b>Plaintiff,</b>	)	<b>BY JURY</b>
	)	
<b>vs.</b>	)	<b>Case No. 10-CV-544</b>
	)	
<b>CAREER EDUCATION CORPORATION;</b>	)	
<b>COLORADO TECHNICAL</b>	)	
<b>UNIVERSITY, INC.; and</b>	)	
<b>MARK COWIE</b>	)	
	)	
<b>Defendants.</b>	)	

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**NOTICE OF REMOVAL**

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TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION:

Pursuant to 28 U.S.C. § 1441 et seq., Defendant Mark Cowie, by and through his counsel of record, hereby removes this action to the United States District Court for the Western District of Missouri, Western Division. As grounds for removal, Defendant states:

1. On or about December 17, 2009, an action was commenced in the Circuit Court of Clay County, Missouri, entitled *Meagan Early vs. Career Education Corporation, Colorado Technical University, Inc., and Mark Cowie*, Cause No. 09CY-CV13397.

2. Attached hereto as Exhibit A and incorporated herein by this reference is a copy of all process, pleadings, and orders served upon the Defendants in this action, as found in the Court's file from the Circuit Court of Clay County, Missouri.

3. On or about May 2, 2010, copies of the summons and complaint in said Case No. 09CY-CV13397 were first received by Mark Cowie via service upon his family member. This

removal is timely under 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days after the receipt by Defendant Cowie through service of a copy of the initial pleading setting forth the claims for relief upon which this action is based. See Marano Enterprises of KS v. Z-Teca Restaurants, 254 F.3d 753, 756 (8<sup>th</sup> Cir. 2001).

4. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(a), and the action is removable under 28 U.S.C. § 1441(a), in that there is complete diversity of citizenship among the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. There is complete diversity of citizenship among the parties, in that Plaintiff is a citizen of Missouri, and none of the Defendants are citizens of Missouri:

a. At the time this action was commenced and at all times since, Plaintiff Meagan Early is an individual domiciled in the State of Missouri. See Plaintiff's Petition, ¶ 2. Therefore, for purposes of 28 U.S.C. § 1332 and 28 U.S.C. § 1441, Plaintiff is a citizen of the State of Missouri.

b. At the time this action was commenced and at all times since, Defendant Career Education Corporation ("CEC") is and has been a corporation organized and existing under the laws of the State of Delaware. CEC's principal place of business is located at 2895 Greenspoint Parkway, Suite 600, Hoffman Estates, Illinois, 60195. CEC's officers and executives maintain their offices at CEC's corporate headquarters or "nerve center" in Hoffman Estates, Illinois and corporate decisions are made from the corporate headquarters. CEC has no offices in Missouri. Therefore, for purposes of 28 U.S.C. § 1332 and 28 U.S.C. § 1441, CEC is a citizen of the States of Delaware and Illinois. See Hertz Corp. v. Friend, 130 S.Ct. 1181 (2010).

c. At the time this action was commenced and at all times since, Defendant Colorado Technical University, Inc. (“CTU”) is and has been a corporation organized and existing under the laws of the State of Colorado. CTU’s headquarters and principal place of business, or “nerve center,” is located in Colorado and/or Illinois, where CTU’s executives are located and its corporate decisions are made. CTU does not have a headquarters or principal place of business in Missouri. Therefore, for purposes of 28 U.S.C. § 1332 and 28 U.S.C. § 1441, CTU is a citizen of the States of Colorado and/or Illinois. See Hertz Corp. v. Friend, 130 S.Ct. 1181 (2010).

d. At the time this action was commenced and at all times since, Defendant Mark Cowie is an individual residing at 10017 Juniper, Overland Park, Johnson County, Kansas. Therefore, for purposes of 28 U.S.C. § 1332 and 28 U.S.C. § 1441, Defendant Cowie is a citizen of the State of Kansas.

6. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, in that:

a. Plaintiff seeks damages “in the amount that Plaintiff was charged for tuition related to CTU’s Surgical Technology Program at the NKC Campus, plus the value of time Plaintiff spent attending the Surgical Technology Program.” See Petition, WHEREFORE clauses. Plaintiff paid \$29,259.51 in tuition and fees to attend CTU. Plaintiff spent two years in the Surgical Technology Program.

b. Plaintiff also seeks punitive damages. See Petition, “WHEREFORE” clauses. Under Missouri law, Plaintiff can recover punitive damages in an amount up to Five hundred thousand dollars (\$500,000) or five times the net amount of the judgment awarded to the plaintiff. See R.S. Mo. § 510.265.

c. Aggregating the actual damages and punitive damages sought by Plaintiff, the amount in controversy exceeds \$75,000. See also Blake v. Career Education Corp. et al, 2008 WL 4151795 at \* 3 (E.D. Mo., Sept. 4, 2008) (jurisdictional amount was met in case asserting similar types of claims, even though actual damages were less than \$75,000, due to the potential for punitive damages).

7. Defendants CEC and CTU have consented to and join in this notice of removal. See Consents of Defendants CEC and CTU, attached hereto as Exhibits B and C, respectively.

8. Defendants have given written notice of the filing of this Notice of Removal to Plaintiff and are filing a copy of this Notice of Removal with the Clerk of the Circuit Court of Clay County, Missouri. A copy of the Notice of Filing Notice of Removal filed in the Circuit Court of Clay County, Missouri, is attached hereto as Exhibit D and incorporated herein by this reference.

9. Venue is proper in this district in that the Circuit Court of Clay County is within the Western District of Missouri, Western Division.

WHEREFORE Defendant gives notice that this action is removed from the Circuit Court of Clay County, Missouri, to the United States District Court for the Western District of Missouri, Western Division, for the exercise of jurisdiction over this action as though this action had originally been instituted in this Court.

Dated: May 28, 2010

Respectfully submitted,

DAVID BEN MANDELBAUM

/s/ *David Ben Mandelbaum*

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ATTORNEY FOR DEFENDANT MARK COWIE

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 28<sup>th</sup> day of May, 2010, by first class mail, postage prepaid to:

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